



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,906	02/14/2007	Angeline Ingrid Bartholomeusz	19781	7415

272 7590 06/16/2009
SCULLY, SCOTT, MURPHY & PRESSER, P.C.
400 GARDEN CITY PLAZA
SUITE 300
GARDEN CITY, NY 11530

EXAMINER

BOESEN, AGNIESZKA

ART UNIT	PAPER NUMBER
----------	--------------

1648

MAIL DATE	DELIVERY MODE
-----------	---------------

06/16/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/576,906

Applicant(s)

BARTHOLOMEUSZ ET AL.

Examiner

AGNIESZKA BOESEN

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-52 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This is a supplemental Office Action restarting the time period for response.

In the restriction requirement sent January 22, 2009 claims 1-130 were restricted instead of claims 1-52. Claims 1-52 are subject to the following restriction requirement.

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-34 and 52, drawn to an isolated hepatitis B variant and a vaccine comprising an agent from a surface component of an HBV variant.

Group II, claim(s) 35-38, 50 and 51, drawn to a method for determining the potential for an HBV to exhibit reduced sensitivity to a nucleoside or nucleotide analog.

Group III, claim(s) 39 and 40, drawn to a method for detecting an agent which exhibits inhibitory activity to an HBV which exhibits resistance or decreased sensitivity to one or more of ADV, LMV, TFV and/or FTC.

Group IV, claim(s) 41-43, drawn to a computer product for assessing the usefulness of a viral variant or biological sample.

Group V, claim(s) 44 and 45, drawn to a use of an HBV variant in the manufacture of a medicament for the treatment or prophylaxis of HBV infection.

Group VI, claim(s) 46 and 47, drawn to a method for detecting a variant HBV exhibiting an altered immunological profile.

Group VII, claim(s) 48 and 49, drawn to a kit for an assay for variant HBV comprising genetic agents capable of detecting an altered polymerase gene and/or an altered surface antigen gene on the HBV variant.

The inventions listed in groups I, II, III, IV, V, VI and VII do not relate to a single general inventive concept under PCT Rule 13.1 because they lack the same or corresponding special technical features for the following reasons: the shared technical feature of the claimed invention is an isolated hepatitis B variant comprising a nucleotide mutation in a gene encoding a DNA polymerase and in S gene and methods for determining the potential for an HBV to exhibit reduced sensitivity to a nucleoside or nucleotide analog and a method for detecting an agent which exhibits inhibitory activity to an HBV which exhibits resistance or decreased sensitivity to one or more of ADV, LMV, TFV and/or FTC.

Bartholomeusz et al. (WO03/066841 A1 in IDS of 10/23/2006) teach an isolated hepatitis B variant comprising a nucleotide mutation in a gene encoding a DNA polymerase and in S gene

and methods for determining the potential for an HBV to exhibit reduced sensitivity to a nucleoside or nucleotide analog and a method for detecting an agent which exhibits inhibitory activity to an HBV which exhibits resistance or decreased sensitivity to one or more of ADV, LMV, TFV and/or FTC (see claims 1-39).

Since Applicant's invention does not contribute a special technical feature when viewed over the prior art they do not have a single inventive concept and thus the claims lack unity of invention. Therefore, the instant invention lacks Unity of Invention and restriction is set forth as it applies to U.S. practice.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AGNIESZKA BOESEN whose telephone number is (571)272-8035. The examiner can normally be reached on 9:00 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Helms can be reached on 571-272-0832. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Agnieszka Boesen/
Examiner, Art Unit 1648